

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEE V. QUILLAR,

Plaintiff,

No. CIV S-04-1203 FCD KJM P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee in effect at the time of filing of this action, \$150.00. 28 U.S.C. § 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected and forwarded by the appropriate agency to the Clerk of the Court

1 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28  
2 U.S.C. § 1915(b)(2).

3 Plaintiff's January 21, 2005 amended complaint states a cognizable claim for  
4 relief under 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the amended  
5 complaint are proven, plaintiff has a reasonable opportunity to prevail on his First Amendment,  
6 Eighth Amendment, Fourteenth Amendment and RLUIPA claims against defendants Rowlett,  
7 Murray and Mendoza. The court therefore will order that those defendants be served with  
8 process. With respect to the other defendants and claims identified in plaintiff's amended  
9 complaint, plaintiff's amended complaint fails to state a claim upon which relief can be granted.

10 Plaintiff also has filed a motion requesting a temporary restraining order and  
11 preliminary injunctive relief. While a temporary restraining order does not require actual notice  
12 to the defendant against whom relief is sought, in this instance, plaintiff's filing does not  
13 demonstrate that he will suffer "immediate and irreparable injury, loss, or damage" if a  
14 restraining order is not issued at this time. Fed. R. Civ. P. 65(b). Because no defendant has  
15 appeared in this action or otherwise received notice of and a chance to respond to plaintiff's  
16 request for a preliminary injunction, such an injunction cannot issue. Fed. R. Civ. P. 65(a)(1).  
17 Plaintiff's motion will be denied without prejudice to refile against a defendant on whom  
18 service has been authorized, after that defendant has appeared.

19 Plaintiff additionally has filed a motion asking that he be placed in federal  
20 custody. Plaintiff has not provided a legal basis in support of his request. His motion will be  
21 denied.

22 Plaintiff further asks that the court appoint him a "special investigator." There is  
23 no cause for appointment of an investigator at this stage of the case. Plaintiff's motion will be  
24 denied.

25 Finally, plaintiff has requested the appointment of counsel. The United States  
26 Supreme Court has ruled that district courts lack authority to require counsel to represent

1 indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298  
2 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of  
3 counsel under 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);  
4 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court  
5 does not find the required exceptional circumstances. Plaintiff's request for the appointment of  
6 counsel will therefore be denied.

7 Plaintiff is informed that the court views some of his motions, namely the request  
8 for an investigator and the request for transfer to federal custody, as frivolous. If plaintiff  
9 continues to file frivolous motions, i.e., motions that have no legal basis, plaintiff will be  
10 sanctioned, possibly with dismissal of this action.

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

13 2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.

14 The fee shall be collected and paid in accordance with this court's order to the Director of the  
15 California Department of Corrections filed concurrently herewith.

16 3. Service is appropriate for the following defendants: Rowlett, Murray and  
17 Mendoza .

18 4. The Clerk of the Court shall send plaintiff three USM-285 forms, one  
19 summons, an instruction sheet and a copy of the amended complaint filed January 21, 2005.

20 5. Within thirty days from the date of this order, plaintiff shall complete the  
21 attached Notice of Submission of Documents and submit the following documents to the court:

22 a. The completed Notice of Submission of Documents;

23 b. One completed summons;

24 c. One completed USM-285 form for each defendant listed in number 3  
25 above; and

26 d. Four copies of the endorsed amended complaint filed January 21, 2005.

1           6. Plaintiff need not attempt service on defendants and need not request waiver of  
2 service. Upon receipt of the above-described documents, the court will direct the United States  
3 Marshal to serve the above-named defendants as provided by Federal Rule of Civil Procedure 4  
4 without payment of costs.

5           7. Plaintiff's June 14, 2005 motion for preliminary injunctive relief is denied  
6 without prejudice to re-filing with respect to a particular defendant after that defendant has  
7 appeared in this case.

8           8. Plaintiff's July 19, 2005 "Motion To Review Additional Evidence . . ." is  
9 denied.

10           9. Plaintiff's September 7, 2005 "Motion For An Emergency Protective  
11 Order . . ." is denied.

12           10. Plaintiff's September 7, 2005 request for the appointment of counsel is  
13 denied.

14           11. Plaintiff's September 12, 2005 request for the appointment of a "special  
15 investigator" is denied.

16 DATED: December 5, 2005.

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UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEE. V. QUILLAR,

Plaintiff,

No. CIV-S-04-1203 FCD KJM P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_

Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff